IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1028 OF 2005

IN

EXECUTION APPLICATION NO.183 OF 2004

IN

SUMMARY SUIT NO.1510 OF 2002

M/s.G.M.Breweries Ltd. ...Plaintiffs

Versus

M/s.Siddhivinayak Builders & Ors. ...Defendants

And

Ajay T.Roy ...Intervenor/Obstruc./ Respondent

.....

Ms.Sumedha Rao for Applicant/Intervenor.

Mr.O.A.Das for Plaintiffs.

Mr.G.T.Mestha, Commissioner for Taking Accounts is present.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 20, 2005.

P.C.

1. This Application is taken out by third

party for setting aside the order of attachment in respect of building known as Venus shown as Item No.5 in the schedule to the Execution Application.

2. This relief is sought on the assertion that the Applicant has purchased Flat No.B-403 on the 4th Floor, in the building known as Venus situated at Chikoowadi, Boriwali (West), Mumbai 400 092 under registered Agreement For Sale dated 6th September 2003. Indeed, copy of the said Agreement is produced on record. From the Agreement, it is seen that the total consideration payable in respect of flat was Rs.3,63,000/- (Rupees Three Lakhs Sixty-three Thousand). Besides, initial payment of Rs.50,000/- (Rupees Fifty Thousand), no document is produced on record to show that further consideration has been paid. Moreover, there is nothing to show that the Applicant has been put in possession of the said flat so far. No possession receipt is produced.

3. The warrant of attachment has been issued on 7th July 2004. As the Applicant has failed to produce any evidence and has expressed inability to

produce further evidence to substantiate his case that he has become owner of the Flat upon payment of consideration, relief claimed in this Application ought to fail.

4. Accordingly, as there is no evidence to substantiate the claim that Applicant has paid entire consideration under the Agreement and that possession of Flat No.B-403 has not been made over to the Applicant, the question of acceding to the request of the Applicant to raise attachment in respect of the said flat or for that matter, the entire building, does not arise.

5. This Application, therefore, fails. The same is rejected.

A.M.KHANWILKAR, J.